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SUMMARY RECORD OF THE 7th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 2 February 1995, at 3 p.m.

Chairman: Mr. HITAM (Malaysia)

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The meeting was called to order at 3.10 p.m.

STATEMENT BY MR. GALLY, MINISTER OF HUMAN RIGHTS AND REHABILITATION OF TOGO

1. The CHAIRMAN invited the Minister of Human Rights and Rehabilitation of Togo to address the Commission.

2. Mr. GALLY (Togo) said that, despite the widespread human rights violations throughout the world, the 1993 World Conference on Human Rights had demonstrated a genuine commitment by the international community to promoting respect for human rights and to integrating them more effectively into the United Nations system. Of particular note was the recognition in the Vienna Declaration and Programme of Action of the right to development as a fundamental human right.

3. That recognition opened up new perspectives for developing countries to consolidate their nascent democracies, redefine the bases for cooperation and promote the economic and social well-being of their peoples. However, those goals could not be achieved without human rights education. He therefore welcomed the launching of the United Nations Decade for Human Rights Education which required a mobilization of the international community against ignorance and illiteracy in order to promote the development of the human person and respect for the rights of all individuals.

4. Recent developments had led to profound socio-political changes which had rocked the monolithic foundations of the old political systems in Asia, Eastern and Central Europe, Latin America and Africa and replaced them by a new trend towards democracy. The end of the system of apartheid in South Africa was a particularly welcome event.

5. Those developments, however, should not permit the international community to forget the genocide in Rwanda, the siege of Sarajevo, the killings in Burundi, the Liberian crisis, the deadlock in the Middle East peace process, the Chechen uprising and the other intolerable situations which revolted the conscience of mankind. Those hotbeds of tension challenged the international community to be vigilant in safeguarding human rights, which was the most effective way of securing peace.

6. His Government welcomed the appointment of a High Commissioner for Human Rights and felt sure that the combined efforts of the High Commissioner and the United Nations Centre for Human Rights would help to secure more effective protection for human rights throughout the world.

7. His Government was resolutely committed to the universal values and principles of human rights. Most of the international human rights instruments had been ratified and progressively incorporated into Togolese domestic law. In 1987, Togo had become the first country on the African continent to establish an independent National Human Rights Commission. Unfortunately, three years of grave socio-political crisis had severely tested that still fragile edifice and had led to violations of human rights and breaches of the rule of law. However, the new pluralist National Assembly was establishing legal and institutional machinery to strengthen the rule of law and had adopted the Government's programme of action which gave priority to

the security of persons and property, human rights and the rule of law. The situation had markedly improved and he was hopeful that Togo was on the right path.

8. At the institutional level, the National Human Rights Commission (CNDH) had been given constitutional status and a Ministry of Human Rights established to implement the human rights policies of the Government. The main tasks of that Ministry were to educate the Togolese concerning the essential values of the human person and the rights and responsibilities of citizens in the context of the nation's democratic renewal and ensure that the decision-making entities of the State respected human rights. In addition, it organized national human rights training seminars for the various socio-political sectors in the country. Under the new Government, the Ministry's responsibilities had been expanded to include national rehabilitation and relations with parliament. It had thus to resolve problems such as the situation of refugees and displaced persons and the victims of the socio-political disturbances.

9. The Government had thus laid the foundations for the construction of a State genuinely built on the rule of law. It intended to consolidate that edifice through the gradual establishment of the institutions provided for in the Constitution, including a constitutional court, a court of audit, a high court of justice, and a high-ranking audiovisual and communications authority. The judiciary, as the guardian of individual liberties, occupied pride of place in that edifice. Training programmes had been launched with the aim of sensitizing judges to human rights issues and ensuring scrupulous respect for legal procedure and the proper application of the law.

10. It was impossible to achieve those goals, however, without a genuine policy of national reconciliation aimed at mending the social fabric and uniting all Togolese in a common national purpose. Accordingly, his Government had recently introduced and the National Assembly had passed an amnesty law covering all politically-motivated offences committed to date on the national territory. A number of detainees, including a journalist, had thus been released in recent weeks.

11. To continue along that path, however, Togo needed the assistance of friendly States and the international human rights institutions. In that connection, he had recently visited a number of capitals to explain the human rights situation in Togo and his Government had also invited non-governmental human rights organizations to visit Togo to see the situation for themselves. He was looking forward to the visit in March 1995 of an appraisal mission from the Centre for Human Rights, as part of the Centre's technical assistance programme.

12. The acquisition of a culture of human rights was a process which required great patience. It could succeed only through proper training to help citizens cast off their prejudices and habits of the past. While the road ahead was a long one and the difficulties were many, Togo had already taken the first decisive steps towards national reconciliation and the building of a free, prosperous and fraternal nation.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE (item 4 of the provisional agenda) (continued) (E/CN.4/1995/3, E/CN.4/1995/8-E/CN.4/Sub.2/1994/43, E/CN.4/1995/13, 14 and 19-22)

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION (item 9 of the provisional agenda) (continued) (E/CN.4/1995/28 and 29)

13. Mr. ZHANG Yishan (China) said that the right to self-determination was one of the fundamental human rights. In recent years, it had become clear that, despite the dismantling of the colonial structure, the right to self-determination was still relevant. In order to ensure respect for that right, it was necessary to oppose any kind of foreign aggression, interference or domination, to safeguard national independence, sovereignty and territorial integrity and to let peoples freely determine their political status and models of economic, social and cultural development.

14. His Government agreed with the principle, set forth in General Assembly resolution 1514 (XV), that any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country was incompatible with the purposes and principles of the United Nations. It supported all United Nations activities aimed at promoting the right to self-determination.

15. Experience had demonstrated that countries prospered and developed when their right to self-determination was fully realized; in the opposite case, social turbulence and ethnic tensions arose, which could give rise to internal instability and strife or regional conflicts, and might ultimately prove to be a threat to international security.

16. As a developing country faced with the difficult task of advancing its economy and improving the standard of living of its people, China was keenly aware of the importance of the right to self-determination. It fully supported the principle set forth in the Vienna Declaration and Programme of Action that the right to self-determination should not be construed as authorizing or encouraging any action which would impair the territorial integrity or political unity of sovereign and independent States acting in compliance with the principle of equal rights and self-determination of peoples.

17. His delegation welcomed the progress made in the last year towards achieving peace in the Middle East. Since the signing in September 1993 of the Declaration of Principles on Interim Self-Government Arrangements by the State of Israel and the Palestine Liberation Organization (PLO), the two parties had been working actively to implement the agreement. His Government hoped that efforts in that direction would continue so that the remaining issues might be resolved in a comprehensive and just manner, thereby allowing the Palestinian people to enjoy and exercise its right to self-determination.

18. Mr. PEREZ NOVOA (Cuba) said it was regrettable that there were those who considered the concept of the right to self-determination to be no longer relevant. While the colonial system had indeed been dismantled, the majority

of international conflicts were still based on the struggle of peoples to exercise the right to self-determination. That right continued to be one of the fundamental pillars of international relations and was vital to ensuring peace, security and international cooperation.

19. In contrast, indiscriminate calls for humanitarian interventions had had a negative effect on the genuine promotion and protection of human rights. Moreover, those who favoured so-called preventive diplomacy were motivated by political considerations which were far removed from human rights concerns and the principles of international law.

20. On the eve of the twenty-first century, international cooperation was being replaced by intervention. Thus, countries which for years had been subject to colonization and exploitation were being forced to accept from without economic and political models which imposed substantial restrictions on their national sovereignty and severely affected the human rights of their peoples and, consequently, the full exercise of their right to self-determination.

21. Those who favoured humanitarian intervention and the notion of limited sovereignty were the same who regretted the fact that the right to self-determination was enshrined in the Charter of the United Nations and wished to eliminate that item from the agendas of various United Nations bodies. His own delegation was firmly convinced that the Commission on Human Rights should continue to study the question of the right of peoples to self-determination.

22. Preventive diplomacy, limited sovereignty and humanitarian interference had been unable to solve the grave problems afflicting the developing countries and the dispossessed, such as hunger, illiteracy and substandard living conditions. Thus it was essential to defend, regardless of the difficulties involved, the principles enshrined in the Charter of the United Nations, in particular the right to self-determination, so that a minority could not impose its will on the vast majority of the world's population.

23. The question of the right to self-determination was also relevant to the relationship between his own country and the United States of America. For more than 90 years, the United States had been occupying a portion of Cuba's territory, against the will of the Cuban people. For over 30 years, it had maintained a criminal economic and trade embargo for the sole purpose of sabotaging the political and social model freely chosen by the Cuban people in 1959.

24. His delegation wished to pay tribute to the work of the Commission's Special Rapporteur on the use of mercenaries as a means of impeding the realization of the right to self-determination. It supported the recommendations in the Special Rapporteur's report (E/CN.4/1995/29) and thought that his mandate should be renewed.

25. Mr. BAKHMIN (Russian Federation) said that, in the Middle East, hope was menaced by hatred and violence. Given the tension in the occupied Arab territories and the Gaza Strip, as described in the Special Rapporteur's

report (E/CN.4/1995/19), his delegation roundly condemned the recent acts of terrorism, which were a threat to the peace process and could throw the Middle East back into a state of chronic confrontation. He supported the Special Rapporteur's view that the international community should do all in its power to uphold the peace process. For the Commission to make a proper contribution, its resolutions and decisions would have to reflect the real situation, without recourse to outworn rhetoric or the stereotypes and tendentiousness of the past. Its main task was to help Israel and its Arab neighbours to implement measures to guarantee human rights and freedoms, within the framework of the peace process.

26. He welcomed the advances that had been made over the past year: the withdrawal of Israeli forces from the Gaza Strip and Jericho, the assumption of powers in those regions by the Palestinian Authority and the recent agreement between Israel and Jordan. Talks were currently in progress in Cairo regarding the organization of elections to the Palestinian Council and he hoped that those discussions would bear fruit and that the momentum of the peace process would soon be such that it could not be halted by extremists and terrorists. He agreed with the Special Rapporteur's proposal that his mandate should be terminated. He also believed that the subject of human rights violations in the occupied Arab territories should in future be examined under item 12 of the Commission's agenda.

27. The idea of national self-determination had acquired a new lease of life, but it was taking some strange forms. With the passing of the regimes that had been dominant over decades, national mentalities had in many cases been twisted into shapes far removed from the original concept of nationality. Thus the notion of self-determination sometimes manifested itself in ways quite alien to the concept of human rights, such as ethnic cleansing, aggressive nationalism, intolerance and xenophobia. Nations were, of course, entitled to choose their own political status and their economic, social and cultural development; but it was unacceptable when such choices led to power being concentrated in one race or group, when economic, social and cultural development led in effect to discrimination or when rights were granted to one group of the population at the expense of another.

28. Some of his compatriots had fallen victim to such forces in several of the newly independent States. Overnight they had become guests - and not always welcome guests - in their own homes. Such a situation was intolerable, since the whole point of self-determination was to guarantee the rights of each individual, without discrimination; otherwise the very opposite of self-determination ensued. He therefore considered that the matter should be considered in a broader context, in conjunction with other human rights questions, including the rights of minorities.

29. A further alarming tendency was to equate self-determination with separatism. The slogan of self-determination was eagerly snatched at by élites of various kinds with the aim of taking and holding power for themselves. The consequence was often the establishment of dictatorships, frequently accompanied by bloodshed and the suppression of human rights. Yet any dictatorship was incompatible with self-determination, since that concept implied the possibility of free, democratic elections. He noted that in

Agenda for Peace the Secretary-General had cast doubt on the idea that each ethnic, religious or language group should seek its own Statehood. When atoms were split they released a colossal force of destructive energy.

30. The international community should therefore adopt a new approach to the matter; it should lay down the criteria it considered crucial to self-determination, thus separating the wheat from the chaff. In addition to the provisions contained in the Vienna Declaration and Programme of Action, such criteria should include a close link between the right to self-determination and the principle of maintaining peace and security, both within a country and internationally; a rejection of terrorism under the pretext of achieving self-determination; the exclusion of any acts destructive of the territorial integrity of independent democratic States; the observance of other human rights and freedoms alongside the right to self-determination; and the strict application of non-discrimination, particularly with regard to minorities. Above all, self-determination should promote and protect human rights and the stability and well-being of society.

31. Mr. KAMAL (Pakistan) said that the right to self-determination was an inalienable right which formed the cornerstone of the international order, was enshrined in the Charter of the United Nations and was recognized as a binding principle of international law. Its application could help to eliminate conflict and maintain the conditions needed for the full enjoyment of political, economic, social and cultural rights. Failure to respect that right could lead to disaffection and strife.

32. At the very time when, as a result of the exercise of the right to self-determination, the United Nations family had grown substantially, the question had arisen as to whether the right to self-determination was absolute. However, the idea that some peoples should be free while others had their freedom abridged in the name of stability and national integrity could not but lead to a new kind of colonialism.

33. The exercise of the right to self-determination was based on the free expression of the will of a people. Any election, referendum or plebiscite organized unilaterally and exclusively by a colonial or occupying authority failed to meet that criterion and would thus be ab initio null and void. No amount of autonomy could serve as a substitute for the right of a people under colonial or alien domination or foreign occupation to seek independence.

34. Kashmir represented a case in which the right to self-determination had been denied through the exercise of force by an illegal occupying power. The political status of the State of Jammu and Kashmir - a territory under dispute - was, as mandated by the Security Council and accepted by the parties involved, to be determined through a free and impartial plebiscite under United Nations auspices. The right of the Kashmiri people to self-determination had been explicitly recognized in several Security Council resolutions, which provided the only agreed basis for the solution of the Kashmir dispute. However, India had resorted to unilateral measures to annex the State, measures which had been rejected by the Security Council in its resolutions 91 (1951) and 122 (1957).

35. There were currently 600,000 Indian troops in Kashmir. Over the last 46 years, India had maintained its illegal occupation of Kashmir by the increasingly brutal use of force. Deaths, injuries, illegal detainment, summary executions, torture and rape were among the methods used by India to break the indomitable spirit of the Kashmiri people. India's massive violations of human rights in Kashmir had been documented by many reputable international human rights organizations.

36. In October 1994, the association of Kashmiri political parties and groups had dismissed the Indian Government's proposal to hold early elections in Jammu and Kashmir as a deliberate attempt to mislead international public opinion. His own Government had always taken the view that the Indian Government's talk about elections, whether with reference to the past or the future, was simply a ploy to avoid responding to pressures exerted by various United Nations human rights bodies.

37. The international community must insist on a genuine commitment from India to halt the massive violations of human rights in Kashmir. India must be persuaded to give up the use of force and to halt repression. Genocide in Kashmir was no answer. The only solution was to allow the Kashmiris to express their will freely through a fair and impartial plebiscite under United Nations auspices.

38. Mr. GOONETILLEKE (Sri Lanka), having expressed his appreciation to the High Commissioner for Human Rights for the impartial and flexible manner in which he was fulfilling his mandate, said that the right to self-determination remained an integral part of individual and collective rights. It was owing to the historical process through which colonialism had been dismantled that many of the States represented in the Commission had come into being. Colonialism had been vanquished by the progressive realization among peoples of their own separate identities as distinct from those of their colonial masters. That awareness had continued to bind people together into groups which were entitled to determine their own fate.

39. Certain contemporary jurists had maintained that the right to self-determination was an absolute right, based on the notion of freedom from external rule. Consequently, the right to self-determination did not imply the ongoing fragmentation of nation-States after independence from external rule had been achieved. Such a view was realistic and amply justified by the need for international peace and security and the concept of "tolerant coexistence".

40. The right to self-determination of peoples under colonial or alien domination had existed as a concept well before the elaboration of any international instrument on the subject. The Charter of the United Nations and other instruments had served only to provide legitimacy to the concept. The historical evolution of the right to self-determination had been clearly based on the struggle of peoples under colonial and foreign occupation or alien domination, and that struggle continued to be valid.

41. The equation of self-determination and secession had been alien to the original conceptualization of the right. The 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among

States in accordance with the Charter of the United Nations stated that self-determination should not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States. The 1993 Vienna Declaration and Programme of Action clearly identified self-determination as a right available to peoples under colonial or foreign occupation or other forms of alien domination and recognized the right of such peoples to take legitimate action, in accordance with the Charter of the United Nations, to realize that inalienable right. No derogation should be permitted from those principles, since that would jeopardize the stability of nation-States and perpetuate lawlessness and intolerance, which would in turn serve as a breeding ground for massive violations of human rights and fundamental freedoms.

42. Despite the well-codified international law on the subject, the international community had witnessed a number of situations in which ethnic, religious or linguistic groups sought to secede from existing States under the guise of exercising their right to self-determination. In most cases, their demands for self-determination were expressed through the use of terror and, in pursuit of what they construed to be their human rights, such groups violated the most basic of human rights, namely, the right to life. Such situations set in motion a vicious process of fragmentation of States and constituted a serious threat to democracy, human rights and the established world order.

43. His delegation wholeheartedly endorsed the notion of internal self-determination not equated with secession. A constructive dialogue between a people and its Government, based on a firm commitment to live together as a nation, would be a better alternative to violence and subversion. The most sacred duty of a Government was to accommodate the reasonable and legitimate aspirations of its people through a dialogue which would ultimately lead to lasting peace, strong democratic institutions and respect for human rights.

44. On the question of the self-determination of the peoples of the occupied Arab territories, including Palestine, his Government had consistently supported the just struggle of those peoples to achieve peace and the efforts of the international community to put an end to their sufferings under occupation. In that connection, the signing of the Declaration of Principles between the PLO and Israel was an historic step towards lasting peace in the region. It was the duty of the international community to support that process, so that the peoples of the occupied Arab territories could achieve their inalienable right to self-determination.

45. Mr. PALLAIS (Nicaragua) said that the signing of the Declaration of Principles between Israel and the PLO was an historic step forward in the search for a solution to one of the most enduring conflicts of modern times. Despite that historic breakthrough, however, the tragic events still occurring in the Middle East were a warning of how dangerous and volatile the situation still was. Despite the many obstacles, however, the only possible solution was to continue along the path to peace.

46. Those who tried to obstruct the peace process must realize that acts of terror harmed only their own people, since they prevented future generations from making the transition towards security and prosperity. None of the parties in the region could afford to let slip the opportunity to achieve peace, security and prosperity in that tormented region. It was heartening to note that, despite many setbacks, the principal leaders in the region remained resolutely on course towards the achievement of peace.

47. Within the context of the peace process in the Middle East, his delegation also welcomed the signing of the peace treaty between Israel and Jordan in October 1994. It also noted with satisfaction the progress which had been made towards peace between Israel and other Arab States, including Morocco and Tunisia, during 1994.

48. The problems of the Middle East were multifaceted and complex, including not only political but also military, legal, humanitarian, religious, historical and even psychological aspects. The peace process therefore required the sustained and continuing efforts of the international community if a just and lasting peace was to be achieved. The Commission on Human Rights should firmly support the process and condemn in a balanced and objective manner all manifestations of violence which threatened its success and, in particular, should take a firm stand against any violation of human rights and encourage respect for humanitarian law and the protection of human rights in the occupied territories.

49. His Government was convinced that peace was the best guarantee of respect for human rights. After more than a decade of fratricidal civil strife, Nicaragua had resolutely embarked upon a process of national reconciliation. His Government was well aware of the havoc wreaked by internal conflict and was therefore under no illusions with regard to the difficulty of the peace process in the Middle East. However, it was time for reconciliation and a new era of peace and stability in that region. A lasting solution to the conflict, which guaranteed the rights of the Palestinian people, would mark a significant contribution to the construction of a new international order meeting the aspirations of mankind on the eve of the twenty-first century.

50. Mr. WIDODO (Indonesia) said that, for his country, the question of self-determination was more than just a matter of conviction. It was also a historical legacy and, indeed, a constitutional mandate. The principle of self-determination had been closely linked historically to the process of decolonization, throughout which the right to self-determination had proven itself to be the most effective instrument for ending colonial rule. The Charter of the United Nations and the Declaration on the Granting of Independence to Colonial Countries and Peoples were important instruments which had clearly placed the right of self-determination in the context of decolonization.

51. Since the process of decolonization had become more or less complete, the concept of the right to self-determination was being adjusted to the dynamic new circumstances and emerging realities. Indonesia continued to believe in the right to self-determination but had also come to realize that the

uncertainties inherent in the current period of adjustment could lead to abuse and manipulation, thereby permitting the right to self-determination to fall into the hands of those not legitimately entitled to it.

52. It was imperative to address the right to self-determination, not in isolation but in conjunction with other equally fundamental principles, such as national unity and the territorial integrity of States. In that regard, it was noteworthy that the 1993 World Conference on Human Rights had reached a historic consensus that the right of peoples to self-determination should not be construed as authorizing or encouraging any act which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

53. Mr. PARREIRA (Angola), taking the floor in reaction to the report of the Special Rapporteur on the use of mercenaries (E/CN.4/1995/29), said that it was not true that the Government of Angola engaged mercenaries in its war with the União Nacional para a Independencia Total de Angola (UNITA). It adhered strictly to the terms of the agreement reached at the Lusaka peace negotiations initiated under United Nations mediation in November 1993. As the war in Angola was coming to an end, there was no need to send a team of monitors to the country. A decision to send such a team would only increase the tension between UNITA and the government forces.

54. Mr. JIT (India) said that the Special Rapporteur had made a serious effort to identify and define the characteristics of mercenary activities in line with the clear-cut parameters laid down in document E/CN.4/1988/14. Commission resolution 1994/7 recognized that mercenaries were used for activities that violated the principles of the Charter of the United Nations upholding the political independence and territorial integrity of States and the self-determination of peoples and those set forth in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.

55. The mercenary problem had assumed global dimensions over the previous decade and presented a challenge to democratization efforts in many societies. Mercenaries were used to foment terrorism, to destabilize legitimately constituted Governments and to undermine the territorial integrity of sovereign independent States. The social and political fabric of multi-ethnic and multi-religious societies was under threat, and religious fundamentalism was being used to provide an ideological substructure for the mercenary movement. The political undertones of such activities were reflected in the demand for secession through violent means.

56. Mercenaries were an ideal instrument for States that wished to advance their extraterritorial interests in violation of resolution 1994/7, while maintaining deniability.

57. In an earlier report to the General Assembly (A/43/385) the Special Rapporteur stated that the act of recruitment of mercenaries was a key indicator of the unlawful nature of their subsequent activities. Recruitment organizations operated overtly, or else covertly in violation of the laws of the State where they carried out their activities, in collaboration with government agents of the country or group that the mercenaries were to serve.

58. He condemned the States or groups involved in mercenary activities and stressed the need to strengthen respect for the sovereignty, equality and independence of States, the self-determination of peoples and the stability of constitutionally established and lawfully functioning Governments. In his latest report to the Commission (E/CN.4/1995/29), he advocated harsh national legislation to deal with public or private bodies that recruited mercenaries for such criminal activities as political repression or the assassination of political, religious or other adversaries.

59. India had direct experience of the use of battle-hardened and well-equipped foreign mercenaries to impose intolerance and promote violent secessionist activity in advancement of external political and territorial interests. India's commitment to the principle of self-determination was basic and well acknowledged, but that concept should not be used as an instrument to promote subversion and erode the political cohesion or territorial integrity of States Members of the United Nations. Otherwise, as the Secretary-General had pointed out in his Agenda for Peace, there would be no limit to fragmentation.

60. The Vienna Declaration adopted at the World Conference on Human Rights had also cautioned in unambiguous terms against construing the right of self-determination in such a way as to dismember or impair the territorial integrity or political unity of sovereign and independent States. As the relevant expert of the Sub-Commission on Prevention of Discrimination and Protection of Minorities had put it at the Sub-Commission's forty-sixth session, the right to self-determination of the people of a sovereign State meant the right of its constituent ethnic and linguistic groups to govern themselves through a representative Government, freely elected through participation by members of all groups in society. It therefore precluded the right to secede on grounds of ethnicity and religion.

61. Jammu and Kashmir was an integral part of India. It had acceded through an Instrument of Accession duly signed by its ruler and ratified by a popularly elected Constituent Assembly. Moreover, its people had repeatedly participated in the political process through democratic elections. Pakistan's repeated references to self-determination in connection with Jammu and Kashmir was thus merely a slogan to cover up its intention to annex the state by force or by any other means, including the sponsorship of terrorist and mercenary activities.

62. It was ironic therefore that the people of Pakistan-occupied Kashmir were precluded from exercising their right to self-determination under article 7 (ii) of the territory's Constitution. The same applied to the people of the "Northern Areas", who had been unilaterally severed from the rest of Jammu and Kashmir and were governed from Islamabad without any constitution or fundamental human rights.

63. The Prime Minister of Pakistan herself had categorically ruled out the so-called "third option" of independence for the people of the Indian state of Jammu and Kashmir, clearly confirming that Pakistan's ultimate aim was annexation rather than self-determination.

64. His Government believed that the Commission had an important responsibility to reinforce the message that the preservation of a pluralistic order through democratic means was the best guarantee for the enjoyment of the right of peoples to self-determination.

65. Mr. HAFYANA (Observer for the Libyan Arab Jamahiriya) said he noted that, at the current session of the Commission, there was a marked reluctance to address agenda items 4 and 9, possibly because of a tendency to believe that the peace process had provided a satisfactory solution to the Arab-Israeli conflict. He used that term advisedly in preference to the term "Middle East", which had been used by the British Colonial Office and such bodies as the Middle East Institute in Washington to present a false picture of Arab history, geography, politics and culture, drowning the Arabs in a sea of quicksand that extended from Morocco to Uzbekistan. While no one was opposed to the concepts of peace, security and stability, the peace process had to be placed in its proper perspective.

66. The two key aspects of Israel's occupation of Arab territories were its failure to implement a whole series of General Assembly and Security Council resolutions dating back to 1967 and its pursuit of a range of oppressive policies in the territories concerned. Those policies included the confiscation and annexation of territory by force, the expansion of settlements, the expropriation of land to build roads for security purposes, the demolition or sealing of Palestinian homes on no sounder basis than suspicion, the plundering and uneven distribution of water resources, the torture and humiliation of Palestinians in prisons and detention camps and the uprooting of trees, a policy conducive to desertification and the erosion of occupied land.

67. The blind hatred and immoral behaviour of the soldiers of the occupying army were described in paragraph 48 of the Special Rapporteur's report (E/CN.4/1995/19). How odd that the occupying authorities should justify such behaviour as abuses committed "for fun or out of hatred" (para. 49). Perhaps the Security Council should adopt a resolution distinguishing between acts of aggression perpetrated in jest and therefore admissible and those perpetrated out of hatred or frustration at the faltering of the peace process and therefore either reprehensible or admissible, depending on the circumstances. The upshot would probably be arguments similar to those concerning the wording of Security Council resolution 242 (1967), the English version of which had omitted the definite article before the words "occupied territories".

68. In view of the practices documented by the Special Rapporteur, his delegation wondered why the Security Council had failed to adopt resolutions imposing sanctions on Israel to compel it to implement its resolutions regarding the occupation of Arab territories, their annexation by force and the Judaization of Jerusalem and Hebron. As those actions were a threat to international peace and security, they logically called for the implementation of the terms of Chapter VII of the Charter and all its mechanisms.

69. The Security Council had adopted resolutions against other States, such as his own, which had not invaded, occupied or annexed another State's territory, but the Council was obviously powerless and prejudiced in the case of Israel. The reason was that Israel had protectors both inside and outside

the Security Council, whose aim was to foil any attempt to take action against it under Chapter VII by ensuring that the veto was used whenever the world's conscience was stirred. It was those protectors who had drafted the text of the new world order, using elastic concepts that allowed for misinterpretation of the provisions of international law. One set of standards was applied flexibly to Israeli expansionism and aggression and another set was applied intransigently to the Arabs.

70. As the Special Rapporteur rightly stated in paragraph 76 of his report, political condemnation was not proving effective in the area of enforcement of human rights in the occupied territories. The Security Council therefore had no alternative but to face up to its responsibilities in a spirit of justice and equity and to adopt a resolution imposing sanctions on Israel, together with the other mechanisms provided for under Chapter VII of the Charter, until such time as Israel complied with its resolutions.

71. It was important to ask whether Israel was really interested in a peaceful settlement to the Arab-Israeli conflict. Any objective observer had to concede that its sole aim was to take as much as possible without giving anything in return. It wanted peace with the Arabs but to keep the occupied Arab territories. It wanted secure borders without establishing firm frontiers. One could only assume that it still had "Eretz Israel" in mind, extending from the Nile to the Euphrates.

72. It wanted to possess weapons of mass destruction but to deny the Arabs all means of self-defence, as well as access to any means of technical and scientific advancement. Israel, a nuclear Power, refused to sign the Treaty on the Non-Proliferation of Nuclear Weapons but was trying, together with its protectors, to get the Arabs to sign it, although none of them possessed weapons of mass destruction. Israel's prevaricating position based on the principle of "take all and give nothing" was tolerated but if, for example, the Syrian Arab Republic insisted on a complete Israeli withdrawal from the Golan Heights, it was condemned as intransigent and subjected to intense pressure by Israel's protectors.

73. Mr. de SANTA CLARA (Observer for Portugal), said that the right to self-determination of colonized peoples was a firmly established and uncontested right enshrined in the Charter of the United Nations and reiterated in a number of General Assembly resolutions. It was based on the equality of States and peoples and was an essential prerequisite for international peace and security. Its denial led to violations of other human rights such as the right to freedom of expression or assembly.

74. The fact that, in the case of East Timor, it was still being denied by a State that had itself previously struggled fiercely for self-determination was an anachronism. His delegation had frequently drawn the Commission's attention to the violation of the right of self-determination of the people of East Timor, a non-self-governing Territory within the meaning of Article 73 of the Charter. In 1974 Portugal, as the administrative authority, had initiated the process of decolonization. Indonesia had then recognized the right of the Timorese people to self-determination and stated that it had no territorial claim to East Timor. Nevertheless, Indonesia had invaded the Territory on 7 December 1975 and subsequently annexed it by force.

75. Immediately after the invasion, the Security Council had unanimously condemned Indonesia by its resolution 384 (1975) and called on the Government of Indonesia to withdraw all its forces without delay from the Territory and to respect the territorial integrity and right to self-determination of the Timorese people. Despite repeated condemnations in General Assembly and Security Council resolutions, the illegal military occupation of East Timor persisted and an entire people was subject to the rule of force and terror and denied the opportunity to express its will freely. Later in the session, his delegation would provide more details of the grave human rights situation prevailing in the Territory.

76. In his opening statement, the High Commissioner for Human Rights had offered his cooperation and assistance in connection with the human rights situation in East Timor. His delegation welcomed that offer and hoped that the Indonesian Government would also take advantage of the High Commissioner's services.

77. The Secretary-General of the United Nations was also continuing his efforts to find a solution to the East Timor problem and conversations between Portugal and Indonesia had taken place under his auspices. Portugal strongly supported those efforts and all action aimed at reaching a just, comprehensive and internationally acceptable settlement that took account of the legitimate rights and aspirations of the East Timorese people. It trusted that Indonesia would also spare no effort to support the Secretary-General's action.

78. Ms. GUERIN (France Libertés - Fondation Danielle Mitterrand) said that the United Nations had never recognized the sovereignty of Indonesia over East Timor. The Fondation had therefore welcomed Indonesia's willingness to cooperate on the occasion of the consensus declarations of 1992 and 1994. However, according to the report of the Commission's Special Rapporteur on extrajudiciary, summary or arbitrary executions, Indonesia had not respected its commitments.

79. It was regrettable, in that connection, that there had been no investigation meeting international standards into the responsibility of the Indonesian army in the Dili massacre of 12 November 1991. Furthermore, Indonesia had failed to respect its pledge to open its territory to human rights organizations, including her own. Another matter of concern was the arrival in November 1994 of additional Indonesian military troops in East Timor, which had served to strengthen the repression of the Timor people, in particular following the unrest in January 1995 during which 20 persons had been killed and many others arrested. In that connection, the Fondation wished to denounce the inhuman treatment to which the majority of those arrested had been subjected, and the failure to respect the right of those detainees to due process.

80. While welcoming the negotiations relating to East Timor within the framework of the United Nations system, her organization deplored the fact that the question of self-determination had not been discussed at the recent meeting between the foreign ministers of Portugal and Indonesia. In accordance with the General Assembly resolution on the subject, the people of East Timor should be represented at discussions concerning their future.

81. Apart from the need for the Commission on Human Rights to ensure that the provisions of the relevant resolutions and declarations concerning East Timor were applied, her organization also recommended certain specific steps: Xanana Gusmao should be freed so that he could participate in the negotiations; Mgr. Belo and other Timorese citizens should also be invited to participate; non-governmental organizations, journalists and observers should have free access to East Timor; follow-up visits to East Timor should be made by the Special Rapporteur on torture and the Working Group on Enforced or Involuntary Disappearances; the migration of Indonesian colonists to East Timor should be halted; and Indonesian troops should be withdrawn from East Timor.

82. Her organization continued to be concerned at the situation of the Saharan people and their struggle for self-determination. It had therefore welcomed the cease-fire between the Frente POLISARIO and Morocco following the adoption by the Security Council, on 29 April 1991, of resolution 690 (1991) containing a settlement plan which had led to the deployment of United Nations troops in Western Sahara. Unfortunately, the referendum scheduled for 1991 had still not taken place.

83. According to the settlement plan, the electoral lists were to be based on the 1974 Spanish census, to which would be added the names of those who had not been counted during that census, provided that they met certain requirements. Nevertheless, according to the testimony of the former vice-chairman of the United Nations Identification Commission, it appeared that, even after having fulfilled the required formalities, some Saharan families had not been added to the lists; others had been prevented from having access to the identification centre set up under United Nations auspices or had been obliged to go through Moroccan controls, and yet others had been turned away by the Moroccan police. Some individuals who had reported such practices feared reprisals.

84. It was quite clear that the Moroccan authorities were seriously implicated in the failure of the peace process in the western Sahara. The United Nations appeared to be unable to act, a fact which had greatly disappointed the Saharan people.

85. Her organization was also concerned about the fate of the more than 500 Saharans who had disappeared or had been imprisoned in Morocco and of whom there had been no news for 20 years. No national or international organization had been able to obtain any information in that regard from the Moroccan Government. The time had come to put a stop to such impunity.

86. Mr. SALDAMANDO (International Indian Treaty Council) said that, for indigenous peoples, the enjoyment of all other human rights and fundamental freedoms was dependent on the exercise of the inherent right to self-determination.

87. According to the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the principle of equal rights of peoples and that of self-determination were two basic parts of one norm. Furthermore, there was no doubt that the right to self-determination had

preceded the appearance of the corresponding norm enshrined in the Charter of the United Nations, which had been a point of departure for the dynamic development of the principle and its legal content.

88. Indigenous peoples had enjoyed the right to self-determination since time immemorial. The United States of America had begun the process of nation building by recognizing the sovereignty of the indigenous nations and concluding treaties with them. The ultimate failure of self-determination in that country had been a result of the fact that many of those treaties and other early legal decisions had not been honoured or had been systematically violated.

89. Other States, particularly in Latin America, had recognized the right of indigenous peoples to self-determination in their constitutions and legal systems, even providing communal lands for some of them. The failure to realize fully the right to self-determination in many of those countries arose not only from chronic failure to observe the law but also from sudden and arbitrary changes in those laws, which had deprived indigenous peoples of their fundamental rights, as had recently occurred in Mexico and Peru.

90. Other countries had never concluded treaties nor had made any efforts to protect the rights of indigenous peoples under the law. In many cases, under the guise of assimilation, Governments had maintained their domination over sovereign indigenous peoples by means of armed force and genocide. The most notorious example in that category was Guatemala.

91. The end result was the same in all cases: indigenous peoples throughout the world were being denied the right to self-determination, upon which their very survival depended. Moreover, the denial of that right was leading to human rights abuses. There could be no lasting peace until there was full enjoyment of the right to self-determination.

92. His organization wished to thank the members of the Working Group on Indigenous Populations and the many indigenous individuals involved for their efforts in preparing the draft declaration on the rights of indigenous peoples. That document contained many basic guarantees which were vital to the interests of indigenous peoples. The draft declaration must be viewed as an integrated whole, at the heart of which was article 3 on the right to self-determination.

93. Part VI of the draft declaration dealt with the rights of indigenous peoples to own, develop, control, use and protect their traditional ancestral lands and resources; those rights and recognition of the rights established by treaties were crucial to the exercise of the right to self-determination. Without their traditional lands, indigenous peoples were denied their very identity.

94. His organization was aware of the concern of various Governments that recognition in the draft declaration of the right to self-determination might lead to national instability or to the downfall of States. Yet, it was the very failure to recognize the aspiration to self-determination that had contributed to the destruction of States. It was the denial of that

fundamental right which threatened the peace and stability and the moral integrity and national honour of States and which was giving rise to massive violations of human rights and fundamental freedoms.

95. He wished to support the suggestion by the Assistant Secretary-General for Human Rights that the Commission should have a separate agenda item for the draft declaration and other issues important to indigenous peoples.

Statements in exercise of the right of reply

96. Mr. MAJDI (Observer for Morocco) said that his delegation could not pass over in silence the allegations made by some non-governmental organizations, although it was used to such slander. He drew attention to the report (S/1994/1420) of 14 December 1994, in which the Secretary-General specifically absolved Morocco from any blame for the delay in the peace process in Western Sahara. The same had been true of the Secretary-General's previous report.

97. Those who claimed that his country was attempting to alter the demographic balance in the territory must have forgotten that thousands of Saharans had fled the area at the onset of war and settled in the northern provinces. There was surely no suggestion that such people should be denied their right to participate in the referendum on self-determination. It was to enable them to do so that the Identification Commission had been set up by the United Nations, consisting of tribal chiefs from both sides, independent experts and observers from the Organization of African Unity. Any person claiming to originate from the Sahara could put in a request for registration, which would then be scrutinized by the Commission.

98. If the referendum process had been delayed it was because, as the Secretary-General pointed out in his report (para. 15), distances were so great that logistic problems arose with regard to providing all identification and inscription centres with observers from all the parties concerned. His Government had consequently opened more identification centres in order to speed up the referendum process. It welcomed Security Council resolution 809 (1993), which confirmed the will of the international community to see the referendum take place as soon as possible.

99. The process was so far advanced that the admirable efforts of the Secretary-General and the United Nations Mission for the Referendum in Western Sahara (MINURSO) should be encouraged, not sabotaged. The allegations that had been made were further testimony to the dismay felt by the Frente POLISARIO with regard to the approaching referendum, at a time when several of its most influential former adherents - along with hundreds of ordinary Saharans - continued to flee their camps and return to the mother country.

100. Mr. ZHANG Yishan (China) said that those who referred to the right to self-determination of Tibet were guilty of a wilful misinterpretation of United Nations human rights instruments. According to the Declaration on the Granting of Independence to Colonial Countries and Peoples, any attempt to disrupt the national unity and territorial integrity of a country was

incompatible with the purposes and principles of the Charter of the United Nations. That principle was reaffirmed by the Vienna Declaration and Programme of Action.

101. China was a united country containing many minority nationalities, of which Tibet was an inalienable part. Some non-governmental organizations had disregarded that fact and openly advocated independence for Tibet under the guise of safeguarding human rights, supported by the anti-China element in some Western countries. They were concerned not about human rights, but about splitting up sovereign nations.

102. If accepted, their point of view would entail the dismemberment of all multi-ethnic countries, to the detriment of their peace and national security. His Government was not alone in feeling concerned at the way the scope of self-determination was currently being extended. He hoped the Commission would pay due regard to that concern and act to uphold the basic norms established by the United Nations on self-determination in relation to the relevant human rights instruments.

103. Mr. KAMAL (Pakistan) said that Jammu and Kashmir was no part of India, integral or otherwise, except by forcible occupation. Security Council resolutions and other official documents of the United Nations indicated that it was a disputed territory. The Secretary-General's reports to the General Assembly referred to the matter as one to be resolved between India and Pakistan. The United Nations Military Observer Group in India and Pakistan had been stationed on the Line of Control in Jammu and Kashmir since 1949. The very fact that the Indian Constitution conferred a special status on Kashmir implied that it was not an integral part of India.

104. The suggestion that Pakistan sought territorial aggrandizement was laughable, coming from the representative of a Government that had successfully swallowed Junagadh, Hyderabad, Goa and Sikkim and had been in illegal occupation of Jammu and Kashmir throughout its 47 years of existence. With regard to the implicit accusation of terrorism, he stressed that Pakistan condemned in the strongest possible terms all forms of terrorism. Pakistan had no intention of interfering in the internal affairs of any country; the suggestion that it abetted cross-border terrorism was ridiculous. On the contrary, in May 1990 Pakistan had proposed the establishment of a neutral mechanism to monitor and survey the Line of Control in Kashmir, a proposal which India had rejected. On two subsequent occasions Pakistan had reiterated its proposal for neutral international observers - indeed, it was prepared to facilitate visits to the areas along the border to enable all to see the situation on the ground - but India still refused to accept such proposals, preferring to retain its option to vilify Pakistan.

105. Lastly, the representative of India had tried to deflect the attention of the Commission from the massive human rights violations taking place in Indian-occupied Kashmir by referring to the situation in Azad - or liberated - Kashmir. He wished to state clearly and categorically that, once India agreed to a plebiscite to be held under the auspices of the United Nations, that plebiscite would be held in all parts of Kashmir, irrespective of the religious, linguistic or ethnic affiliations of its people.

106. Mr. BROTODININGRAT (Indonesia) said he regretted that the observer for Portugal had once again presented a distorted and misleading picture of the historical facts and the real situation in East Timor. Since there were no new elements of substance in the Portuguese statement, he referred the observer for Portugal to his own statement in exercise of the right of reply the previous year (E/CN.4/1994/SR.8).

107. The question of self-determination in East Timor would be more appropriately addressed - if it should be addressed at all - in the dialogue between the foreign ministers of Indonesia and Portugal under the auspices of the Secretary-General. The fifth round of that dialogue had taken place a few weeks earlier in a positive and constructive spirit and it was due to continue on 19 May 1995. The Secretary-General had urged the need for continued restraint by both parties in the interests of maintaining a favourable atmosphere for further progress towards a just, comprehensive and internationally acceptable solution to the question of East Timor. It was therefore inappropriate and misplaced to make the issue of self-determination in East Timor a multilateral one, since that could endanger the dialogue. He could hardly believe that that was the intention of the observer for Portugal.

108. Mr. CHANDRA (India) said he reiterated that Jammu and Kashmir was an integral part of India; the validity of its accession to India was beyond all doubt. When the States of India and Pakistan had been created in 1947, the princely states had been given the option of joining one or other State. No conditions or caveats had been attached. If the accession of Jammu and Kashmir to India was questioned, it threw into doubt the adherence of other states to Pakistan, not to mention the status of India and Pakistan themselves.

109. The only Security Council resolutions agreed to by his Government were resolutions 38 (1948), 39 (1948) and 47 (1948). Those provided for a cease-fire and the withdrawal of Pakistani troops from the area they illegally occupied; only after those conditions had been met would a plebiscite be possible. Pakistan had failed to meet those conditions. The root cause of the problem in Jammu and Kashmir was Pakistan's massive involvement in terrorism in the area. Terrorists had destroyed over 1,000 Government buildings and 500 schools; 300,000 people had emigrated from the valley.

110. His Government was acting with restraint in those circumstances: where human rights violations existed, those guilty were duly punished. Human rights centres had been set up throughout the area and a National Human Rights Commission had been established. Over a recent six-month period, the security forces had returned fire in only 30 per cent of the 1,000 cases of violence that had occurred, and only five civilians had been killed. His country was committed to openness and the improvement of the human rights situation in Jammu and Kashmir, as well as in the rest of India.

111. Mr. KAMAL (Pakistan) said that self-determination was fundamental to the enjoyment of human rights. Indian action in Jammu and Kashmir was rightly being scrutinized under item 9 of the provisional agenda. Behind the obfuscation contained in the statement by the representative of India lay the fact that India and Pakistan were both parties to Security Council resolutions calling for a plebiscite.

112. Security Council resolutions 91 (1951) and 122 (1957) dealt specifically with the unilateral action taken by India to annex Jammu and Kashmir. Amnesty International and the many other non-governmental organizations were presumably wrong in their documented views on the status of the area and only India was right. That it was a disputed territory was recognized by the United Nations itself. The dispute could not be wished away. All the parties held self-determination in trust for the people of Jammu and Kashmir, both those who had died and those who survived in its living hell.

113. Mr. de SANTA CLARA (Observer for Portugal) said he wished to refer the Commission to his statement in exercise of the right of reply to the representative of Indonesia the previous year (E/CN.4/1994/SR.8). Noting that the matter fell within the competence of the United Nations, as Indonesia recognized, he hoped that the Secretary-General's efforts would be crowned with success. He would be very pleased if Indonesia produced positive results and improved conditions in East Timor.

114. Mr. CHANDRA (India) said that the definition of the concept of self-determination was most uncertain in modern international law. It was undoubtedly a legal right, but its lineaments were uncertain. In any case, the accession of Jammu and Kashmir to India had been legal and the region was an integral part of India, accepted as such by popular consent. If it was a "living hell", that was due to terrorism supported by Pakistan. His own Government was acting with restraint.

115. The CHAIRMAN said that the Commission had completed its discussions under item 9 of the provisional agenda.

The meeting rose at 6.15 p.m.